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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/632,812	08/04/2000	Steven H. Coberly	9323.00001	2522

22907 7590 01/03/2006

BANNER & WITCOFF  
1001 G STREET N W  
SUITE 1100  
WASHINGTON, DC 20001

EXAMINER
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BARRY, CHESTER T

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 01/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/632,812

Applicant(s)

COBERLY ET AL.

Examiner

Chester T. Barry

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☒ Claim(s) 1-14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 9/1/00 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/10/03.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

Objection is made to Claims 1 – 8, 10 – 11 under 37 CFR 1.173(b)(2) for failing to use the appropriate claim status identifier. As noted in 37 CFR 1.173(b)(2), “[f]or any claim changed by the amendment paper, a parenthetical expression ‘amended,’ ‘twice amended,’ *etc.*, should follow the claim number.” The status identifier of record for these claims, i.e., “previously presented,” are 37 CFR 1.121 claim status identifiers which are not applicable to reissue claims. Correction is required.

Objection is made to Claims 9, 12 under 37 CFR 1.173(b)(2) for failing to use the appropriate claim status identifier. As noted in 37 CFR 1.173(b)(2), “[f]or any claim changed by the amendment paper, a parenthetical expression ‘amended,’ ‘twice amended,’ *etc.*, should follow the claim number.” The status identifier of record for these claims, i.e., “currently amended,” are 37 CFR 1.121 claim status identifiers which are not applicable to reissue claims. Correction is required. Correction is required.

Objection is made to claims 9 – 14 under 37 CFR 1.173(d) for improper markings of these new claims, i.e., claims that did not appear in the issued patent. 37 CFR 1.173(d) reads in pertinent part, “[a]ny changes relative to the patent being reissued which are made to the . . . claims . . . by an amendment

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paper in the reissue application, must include the following markings: ... (2) The matter to be added by reissue must be underlined . . . “

Claims 1 – 14 are rejected as being based upon a defective reissue oath under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is: A supplemental reissue oath/declaration under 37 CFR 1.175(b)(1) must be received before this reissue application can be allowed. Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

“Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant.”

See also MPEP 1414.01.

Paper headings should bear the examiner's last name correctly spelled, i.e., “Barry,” and the correct Group Art Unit Number, i.e., 1724, to facilitate matching of the paper with the appropriate file should applicant err in listing the application serial number, i.e., 09/632812.

Respectfully,

  
**CHESTERT. BARRY**  
**PRIMARY EXAMINER**

571-272-1152